



**REGULAR MEETING OF THE CITY COUNCIL  
TUESDAY MAY 11, 2021  
MINUTES**

A meeting of the City Council ("Council") of the Village of The Hills ("the Village") was held remotely. Mayor Wharton called the meeting to order and the roll was called of the duly constituted officers and members of the Council to wit:

Greg Wharton, Mayor  
Hilda Potsavich, Mayor Pro Tem  
Robert Smith, Councilmember, Secretary

Jim Nelson, Councilmember, Treasurer  
Rodney Thompson, Councilmember  
Zac Carroll, Councilmember

**and all said persons were present thus constituting a quorum.**

Also present were Wendy Smith and Linda Lunney, Village of The Hills; Earl Wood, MUD; Tom Stiles, POA; Patty Akers, City Attorney; Dan Wegmiller, Specialized Public Finance Inc.; Robert Gattilia, Singleton, Clark & Company, PC; and resident Miguel Gamino.

**CALL TO ORDER**

The meeting was called to order at 9:00 am.

**PUBLIC COMMENT**

There were no comments.

**CONSENT AGENDA**

1. Minutes of April 13, 2021 Regular Meeting

2. Finance/Treasurer's Report for April 2021.

Councilmember Nelson reported a positive financial position, with an anticipated favorable balance at the end of the year.

*Mayor Pro Tem Potsavich moved approval of the Consent Agenda; Councilmember Carroll seconded the motion which carried unanimously.*

## **REPORTS**

### **1. Park Liaison**

Councilmember Smith reported 193 residents responded to the survey recently distributed. The Commission will summarize the responses and will present it to the Council and the community, expressing appreciation to those that responded.

The Commission will hold a re-opening of the park on June 12 with refreshments and will discuss HillsFest. Lighting and refreshing vegetation was discussed and Mayor Pro Tem Potsavich was asked to help choose plants that need replacing.

### **2. City Manager's Report**

Wendy Smith passed giving a report in deference to time

### **3. Mayor's Report**

Mayor Wharton explained his report was covered under Business Items. He also stated that he was aware of a number of neighbor to neighbor disputes and has been called upon to mediate some of them. He is investigating mediation programs to help this issue.

## **BUSINESS ITEMS**

### **1. Discussion and possible action on Disaster Declarations, Travis County Orders, and the Governor's Executive Orders**

The City will continue in alignment with the Governor's Executive orders for the next 30 days.

*Mayor Pro Tem Potsavich moved to continue alignment with the Governor's Executive orders; Councilmember Smith seconded the motion which carried unanimously.*

### **2. Presentation and possible action on the Annual Financial Audit for FY 2019-2020**

The Auditor, Robert Gattilia presented the Annual Financial Audit for FY 2019-2020. It is the opinion of the Auditors that the audit evidence obtained from The Village of The Hills is sufficient and appropriate to provide a basis for their audit opinions. It is the opinion of the auditors that "the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, and each major fund of the Village as of September 30, 2020, and the respective changes in financial position, where applicable, cash flows thereof and the respective budgetary comparison for the General Fund for the year then ended in accordance with accounting principles generally accepted in the United States of America".

It was recommended committing or assigning some amount of the equity balance of the General Fund to a non-debt producing project.

*Councilmember Carroll moved to accept the Annual Financial Audit for FY 2019-2020; Mayor Pro Tem Potsavich seconded the motion which carried unanimously.*

### **3. Discussion and possible action on the Audit Engagement Letter for FY 2020- 2021**

*Councilmember Carroll moved to accept the Audit Engagement Letter for FY 2020-2021; Councilmember Smith seconded the motion which carried unanimously.*

**4. Discussion and possible action to award a contract to Specialized Finance Inc. for Financial Advising Services.**

Dan Wegmiller appeared to discuss the issuance of debt for special projects. The limited tax bond can be up to a 7 years. It will go out for bids from local and possibly national banks at the end of May. The bids will be brought to Council at the June meeting with his recommendations. Financing the Walking Trail in this way will open up funds for other projects such as the playground in the park.

*Councilmember Smith moved to empower the Mayor and City Manager to engage Orrick Herrington & Sutcliffe LLP as Bond Council and the City Attorney to pursue a Tax Bond of \$1,125,000, offering costs not to exceed \$35,000; Councilmember Nelson seconded the motion which carried unanimously.*

**5. Discussion and possible action to award a contract to Orrick Herrington & Sutcliffe LLP as Bond Council.**

Approval included in Item #4 motion.

**6. Consider proposal from Sunscape Landscaping for vegetative debris removal, landscaping, and irrigation in The Hills City Park & Nature Trail**

Wendy Smith reviewed the proposal from Sunscape which includes removal of dead debris from the winter storm, new plant material and new irrigation at the entrance of the park, sod in the entrance and lighting around the sign.

*Councilmember Nelson moved approval of the proposal from Sunscape Landscaping, not to exceed \$12,000 with specific vegetation selection by the City Manager, Councilmember Smith and Mayor Pro Tem Potsavich; Mayor Pro Potsavich seconded the motion which carried unanimously.*

**7. Discussion and possible action regarding Park Playscapes and Ancillary Facilities**

This item was tabled until feedback form the Park Commission and survey results.

**8. Discussion of a proposed Noise Ordinance**

Mayor Wharton reviewed the history and need for a Noise Ordinance. The purpose of an Ordinance would be for immediate response to issues (such as dog barking, or loud noises) where the constable would be able to knock on doors to stop the disturbance. The POA has noise regulations but as a delayed reaction, letters, fines, etc. Councilmember Nelson suggested if the Ordinance is passed, a procedural chart be made for the council to follow. Councilmember Nelson does not believe this is an issue that warrants and Ordinance at this time.

*Councilmember Carroll moved approval of the proposed Noise Ordinance; Councilmember Smith seconded the motion; Councilmember Nelson opposed the motion; the motion carried.*

**9. Discussion and possible action regarding Memorial Dedication Policy**

*Mayor Pro Tem Potsavich moved to approve the Memorial Dedication Policy; Councilmember Nelson seconded the motion which carried unanimously.*

**10. Discussion and possible action regarding an agreement with the City Manager**

The Mayor conferred with Patty Akers about the procedure for the City Manager contract. The final contract will be presented at the next meeting.

**11. Consultation with the City Attorney regarding Open Meetings, Open Records, and Communication**

The City Attorney discussed "daisy-chain" violations where a councilmember discusses an issue with one member and that member in turn discusses with another, etc. She would prefer councilmembers not text or email each other about issues but rather communicate with staff, who in turn communicates with the councilmembers. Councilmember Nelson recommended the attorney look over the city's Communication Policy and suggest amendments. It was also expressed that any communication for the public from the Mayor or any Councilmember get approval of the entire Council.

**ANNOUNCEMENTS AND REQUESTS**

- New business items to be included on the next agenda

The MUD's summer drought predictions are requested for the next agenda.

The Mayor asked assistance in preparing an informational meeting for the public regarding the Bonds and Noise Ordinance.

**EXECUTIVE SESSION**

There was no Executive Session.

*The Mayor and City Council may adjourn into Executive Session at any time during the course of this meeting to discuss any matters listed on the agenda, as authorized by the Texas Government Code including, but not limited to, Sections §441.071 (Consultation with attorney), §551.072 (Deliberations about Real Property), §551.073 (Deliberations about Gifts and Donations), §551.074 (Personnel Matters), §551.076 (Deliberations about Security Devices), §551.087 (Economic Development), §418.183 (Deliberations about Homeland Security Issues), and as authorized by the Texas Tax Code including, but not limited to Section 321.3022 (Sales Tax Information).*

- Sales Tax Information

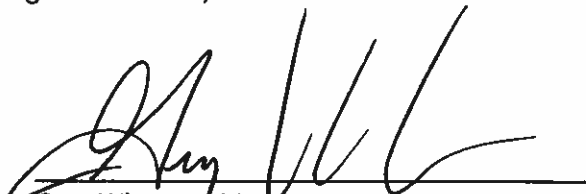
**ADJOURNMENT**

Mayor Pro Tem Potsavich moved to adjourn the meeting at 10:27 a.m.; Councilmember Carroll seconded the motion which carried unanimously.

Signed this 12<sup>th</sup> day of June 2021.

(Seal)



  
Greg Wharton, Mayor

  
Linda Lunney, City Secretary

## **ORDINANCE NO. 2021-001**

**AN ORDINANCE OF THE VILLAGE OF THE HILLS DECLARING CERTAIN NOISES TO BE A NUISANCE AND ENACTING NOISE REGULATIONS, PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; DEFINITIONS; GENERAL PROHIBITIONS; SPECIFIC PROHIBITIONS; NONAPPLICABILITY; REPEALER CLAUSE; A SEVERABILITY CLAUSE; EFFECTIVE DATE; PROVIDING FOR PENALTY IN ACCORDANCE WITH ARTICLE 1.01 OF THE CODE OF ORDINANCES; AND PROPER NOTICE AND OPEN MEETING.**

WHEREAS, the City Council of The Village of The Hills ("City Council") finds that certain unreasonably loud noises cause material distress, discomfort and injury to person of ordinary sensibilities in the immediate vicinity thereof, and that these noises unreasonably with the enjoyment of life and property; and

WHEREAS, the City Council seeks to protect the public welfare and safety of its residents, and to preserve property values within the Village through the reasonable regulation of certain noises; and

WHEREAS, the City Council has the general statutory authority, pursuant to Texas Local Government Code Chapter 51, to adopt an ordinance, rule or police regulation that is for the good government, peace, and order of the Village; and

WHEREAS, the City Council has the specific statutory authority, pursuant to Texas Local Government Code Chapter 54 to impose fines for violation of a municipal ordinance; and

WHEREAS, the City Council finds it to be in the best interest of the public safety, health and general welfare to regulate certain noises within the Village of The Hills.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE VILLAGE OF THE HILLS, TEXAS:**

**Section 1. Findings Incorporated.** The above and foregoing premises are true and correct and are incorporated into the body of this Ordinance as if fully set forth herein.

**Section 2.** The Code of Ordinances of the Village of The Hills is hereby amended to add Chapter 8 Offences and Additional Provisions, Article 8.03 Noise to read as follows:

### **Sec. 8.03.001 Definitions**

Words used and not defined in this article shall have their ordinarily accepted meaning. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Person:* means an individual, corporation, organization, government agency, business, trust,

partnership, association, or any other legal entity.

*Public space* means any real property or structures on real property, owned by a government entity and normally accessible to the public, including, but not limited to, parks and other recreational areas.

*Village*: means the Village of The Hills.

#### **Sec. 8.03.002 General Prohibition.**

No person within the Village shall create, generate, emanate, make, continue or cause to be made or continued, any loudly audible noise that annoys, disturbs, distresses, injures or endangers the comfort, repose, convenience, health, peace or safety, or welfare of any reasonable person with ordinary sensibilities within the Village. This general prohibition is not limited by the specific prohibitions contained in this Ordinance.

#### **Sec. 8.03.003 Specific Prohibitions.**

- (a) The noises and acts set forth in the following are declared to be prohibited noises in violation of this section but shall not be deemed to be exclusive:
  - (1) *Vehicle horns, signaling devices*: The sounding of any horn or signaling device on an automobile, motorcycle, or other vehicle on any street or public place of the Village, except as a danger warning; the creation by means of any such signaling device of any unreasonably loud or harsh sound; the sounding of any such device for an unnecessary and unreasonable period of time; the use of any horn, whistle, or other device operated by engine exhaust. This section does not apply authorized emergency vehicles, which may use warning sounds.
  - (2) *Engine exhausts*: The discharge into the open air within the Village of the exhaust of any steam engine, gasoline engine, stationary internal combustion engine, or other kind or type of engine, motorboat, or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
  - (3) *Operation of vehicle*: The unreasonably loud, disturbing, and unnecessary grating, grinding, or rattling noise caused by the use of any motor vehicle that is out of repair or poorly or improperly loaded.
  - (4) *Loading or unloading merchandise, materials, or equipment*: The creation within the Village of unreasonably loud, disturbing and unnecessary noise in connection with loading or unloading of any vehicle at a place of business or residence.
  - (5) *Construction or repair of buildings, excavation of streets and highways*. The construction, demolition, alteration, or repair of any building, in or adjacent to a residential district or the excavation of streets and highways in or adjacent to a residential district, including the use of pile drivers and hammers, other than between the hours of

7:00 a.m. and 7:00 p.m. on weekdays and 7:00 a.m. and 7:00 p.m. on weekends, except in case of urgent necessity in the interest of public health and safety, and then only with a permit from the Village Manager or designee, which permit may be granted for a period up to three (3) days while the emergency continues and may be renewed for periods of three days while the emergency continues.

- (6) *Blowers and similar devices:* The operation any noise-creating blower, power fan, or any internal combustion engine, the operation of which causes unreasonably loud, disturbing, and unnecessary noise, between the hours of 7:00 p.m. and 7:00 a.m., unless such blower or fan is muffled to deaden such noise.
- (7) *Loudspeakers, amplifiers, public address systems, and similar devices:* The unreasonably loud, disturbing, and unnecessary use or operation of a loudspeaker, amplifier, public address system, or other device for producing or reproducing sound between the hours of 9:00 p.m. and 7:00 a.m. from Sunday evening through Friday morning, between 10:00 p.m. and 7:00 a.m. from Friday evening through Sunday morning and holidays in such a manner as be plainly audible at a distance of fifty feet (50') from the location of such set, instrument, or device.
- (8) *Radios, televisions, phonographs, stereos, musical instruments, and similar devices:* The playing, using, operating or permitting to be played, used or operated, any radio, televisions, phonographs, stereos, musical instruments or other machine or device for the producing or reproducing of sound between the hours of 9:00 p.m. and 7:00 a.m. from Sunday evening through Friday morning, and between 10:00 p.m. and 7:00 a.m. from Friday evening through Sunday morning and on those evenings preceding holidays, loud enough to be clearly heard fifty feet (50') from any the boundary of the property on which the sound is produced r reproduced.
- (9) *Schools, Courts, and Churches:* The creation within the Village of any excessive noise in the vicinity of any school, institution of learning, court, government administration facility, or church, while the same is in use, which unreasonably interferes with the workings of such institution, or which disturbs or unduly annoys occupants of the institution, provided conspicuous signs are displayed at or near such buildings indicating that the same is a school, court, government administration facility, or church.
- (10) *Yelling, shouting and similar activities:* Yelling, shouting, hooting, whistling, or singing residential areas or public places between the hours of 9:00 p.m. and 7:00 a.m. or at any time or place so as to unreasonably annoy or disturb the peace, quiet, comfort or repose of persons of ordinary sensibilities.
- (11) *Animals:* The owning, keeping, or harboring of any animal which shall by any noise, unreasonably and/or excessively disturb the peace and quiet of any person in the vicinity. The phrase "unreasonably and/or excessively disturb the peace and quiet" shall include, but is not limited to, the creation of any noise by an animal which can be heard by any persons, from a location off the animal's owner's property where the animal is being kept, and which noise:

- a. During the hours of 6:00 a.m. through 9:59 p.m.:
  1. Occurs repeatedly over at least a ten-minute period of time with one minute or less lapse of time between each animal noise during the ten-minute period; or
  2. Occurs repeatedly over at least a five-minute period of time with one minute or less lapse of time between each animal noise during the five-minute period and two or more complaints from different neighbors about said noise are received by the public safety department.
- b. During the hours of 10:00 p.m. through 5:59 a.m.:  
Occurs five or more times over a period of one minute.
- c. This provision shall not apply to animals that are responding to trespassers or to animals that are teased or similarly provoked to bark.

(12) *Lawn tools.* No person shall operate tools and domestic maintenance equipment powered by external air compressors or internal combustion engines including, but not limited to, use of lawn mowers, hedge clippers, chain saws, mulchers, garden tillers, edgers or other similar domestic power maintenance equipment daily between the hours of 9:00 p.m. to 7:00 a.m.

(13) *Noise parties and gatherings.* No person shall permit or participate in any party or gathering of people, on public or private property, giving rise to noise, unreasonably disturbing the peace, quiet or report of a reasonable person or reasonable persons. It shall be presumed that a violation of this section has occurred when any noise from a gathering is plainly audible, at a distance of 50 feet or more, between the hours of 10:00 p.m. and 7:00 a.m.

(14) *Air conditioning unit; generator, swimming pool machinery.* No person shall permit unreasonably loud and unnecessary sound produced by the operation of any air-conditioning unit, heat pump, generator, HVAC system, or swimming pool machinery that is plainly audible at a distance of twenty feet (20') from the location of such equipment.

#### **Sec. 8.03.004 Exemptions**

Sounds caused by the following are exempt from the prohibitions set out in section 8.03.003 and are in addition to the exemptions set forth in section 8.03.003:

- (1) Sound generated by an emergency vehicle or for the purposes of alerting persons to an emergency;
- (2) Sound produced by duly authorized officers, agents or employees of a government agency in the performance of a governmental function;
- (3) Sound generated at or by a parade route during a lawful and permitted parade, scheduled civic or sporting event, an outdoor festival or celebration, or a musical theatrical production co-sponsored or authorized by the Village.



- (4) Reasonable activities conducted on public playgrounds and public or private school grounds, which are conducted in accordance with the manner in which such spaces are generally used, including, but not limited to, school athletic and school entertainment events.

**Sec. 8.03.005 Village Manager may grant variances.**

The Village Manager may grant variances from the technical application of this Ordinance upon receipt of a forty-five dollar (\$45.00) administrative fee and upon finding that:

- (1) The activity, operation, noise or vibration will be of temporary duration and cannot reasonably be done in a manner that will comply with this article;
- (2) No reasonable alternative is available to the applicant;
- (3) The variance is not contrary to the public interest;
- (4) Due to special circumstances, a literal enforcement of the Ordinance would result in undue hardship (which does not necessarily include financial hardship); and
- (5) The spirit of the Ordinance will be observed and substantial justice done.

**Section 3. Penalty Clause.** Any person, firm, or corporation violating any of the provisions or terms of this Ordinance shall be subject to the general penalty provision in Sec. 1.01.009 of the Code of Ordinances.

**Section 4. Repealing/Savings Clauses.** All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict. Any remaining portions of said ordinances shall remain in full force and effect.

**Section 5. Severability.** Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Village of the Hills hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.


**Section 6. Effective Date.** This Ordinance shall be and become effective immediately upon and after its passage and publication as may be required by governing law.

**Section 7. Open Meeting.** The meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

**DULY PASSED AND ADOPTED** by the City Council of the Village of The Hills, Texas, on the 11<sup>th</sup> day of MAY, 2021.



APPROVED:

  
Greg Wharton, Mayor

ATTEST:

  
Linda Lunney, City Secretary

APPROVED AS TO FORM:

  
Patty L. Akers, City Attorney